

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**BENNIE CLARK,**

**PETITIONER**

**V.**

**NO. 1:04CV322-P-D**

**WARDEN BRADLEY, ET AL,**

**RESPONDENTS**

**ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT**

The respondents filed a motion to dismiss on April 13, 2005, on the grounds that the petition was untimely filed. Magistrate Judge Jerry Davis filed a Report and Recommendation (R&R) on May 11, 2005, recommending that the motion to dismiss be granted. Any objections to the R&R were ordered to be filed no later than May 25, 2005. On May 24, 2005, the *pro se* petitioner moved for additional time to file objections, and the motion was granted and petitioner was given until October 31, 2005, to file objections. No objections were received by the court, and on December 7, 2005, the R&R was approved and adopted and the respondents' motion to dismiss as untimely filed was granted.

Petitioner filed a motion for reconsideration on January 19, 2006, which the court will treat as a motion for relief from judgment pursuant to Rule 60(b), Federal Rules of Civil Procedure. The petitioner states that he "caused to be mailed his Certificate of Appealability to this Honorable Court on October 28, 2005," that he therefore had complied with the order to provide objections no later than October 31, 2005, and that his objections should have been considered.

A Certificate of Appealability was not appropriate in October 2005, since the case at that time had not been dismissed and therefore there was nothing to appeal. Moreover, until the motion for reconsideration was filed on January 19, 2006, the court had not received a Certificate of Appealability, objections to the R&R, or any other pleading from the petitioner since May 24, 2005,

when he moved for additional time to file objections to the R&R. Accordingly, the motion for relief from judgment is **denied**.

**SO ORDERED**, this the 23<sup>rd</sup> day of January, 2006.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE